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OFFICE OF PETITIONS

In re Application	:	DECISION ON APPLICATION
Kenneth Minton	:	FOR PATENT TERM ADJUSTMENT
Application No. 10/695,066	:	
Filed: October 27, 2003	:	
Patent No. 6,969,606	:	
Issued: November 29, 2005	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT", filed February 27, 2007. Patentee requests that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected.¹

The application for patent term adjustment is **DISMISSED**.

On November 29, 2006, the above-identified application issued into patent No. 6,969,606. The patent stated that the patent term adjustment (PTA) is zero (0) days. On November 28, 2005, patentee timely submitted an application for patent term adjustment, asserting that the correct number of days of PTA is one hundred seventy-five (175) days. Patentee asserted entitlement to a patent term adjustment under 37 C.F.R. §1.703(a)(6), on the basis that the patent issued more than four months after payment of the issue fee.

¹ While patentee does not specify the number of days of patent term adjustment believed to be accorded, presumably patentee is requesting a patent term adjustment of 68 days, as patentee does not argue that the 107 days of applicant delay was in error.

The Office determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of zero (0) days, reduced by one hundred seven (107) days of applicant delay pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(10).

The application for patent term adjustment was dismissed in a decision mailed on February 15, 2007. The decision pointed out that a review of the application file revealed that the 107 days of applicant delay for the filing of a status letter was correct.² In addition, the decision agreed with patentee that PTO delay should have been incurred for the Office's failure to issue the patent within four months of payment of the issue fee. However, the decision explained that the PTO delay should only have been 85 days, not 175 days as asserted by patentee.

In the application for patent term adjustment filed November 28, 2005, patentee stated that he paid the issue fee on February 7, 2005. However, the decision noted that patentee supplied no USPTO date stamped postcard receipt, evidencing the issue fee filing on that date. Rather, on May 5, 2005, applicant supplied the issue fee (with a petition to withdraw the holding of abandonment), made timely for purposes of abandonment by including a Certificate of Mailing dated February 7, 2005. However, as noted in the decision, under 37 C.F.R. 1.704(f), a Certificate of Mailing is not taken into account in the determination of patent term adjustment. The instant patent issued on November 29, 2005. Accordingly, PTO delay of eighty-five (85) days should be assessed under 37 C.F.R. §1.703(a)(6), from September 6, 2005 to November 29, 2006.

With the instant request for reconsideration, patentee argues that he did indeed supply a copy of a USPTO date stamped postcard receipt, dated February 7, 2005. Petitioner has included an additional copy with the request for reconsideration. It is noted that the postcard does not contain a USPTO date stamp of February 7, 2005. The USPTO date stamp on the postcard is dated August 30, 2005. The postcard contains a notation by applicant dated February 7, 2005. However, this is not sufficient evidence to overcome the record, which indicates that the issue fee was received on August 30, 2005.

One of two scenarios happened: 1). Applicant mailed the issue fee on February 7, 2005, with a timely Certificate of Mailing.

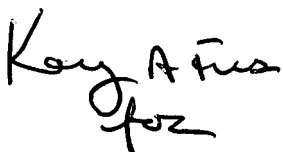
² The PTO has stated that the filing of status letters will constitute a "failure to engage". See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed, 1247 Off. Gaz. 111 (June 26, 2001).

For some unknown reason, the issue fee was not received in the Office until August 30, 2005, at which time the Office date stamped the postcard receipt and returned it to applicant; or 2). Applicant mailed the issue fee on February 7, 2005, with a timely Certificate of Mailing. For some unknown reason, the issue fee arrived in the Office shortly thereafter, where it sat and remained undiscovered until August 30, 2005, at which time the Office date-stamped the postcard receipt and returned it to applicant.

It is petitioner's burden to prove the second scenario. Petitioner did prove that he timely mailed the issue fee on February 7, 2005, as he included a Certificate of Mailing with that date. This is the reason the holding of abandonment was withdrawn. However, as explained above, a Certificate of Mailing is not taken into account in the determination of patent term adjustment.

In view thereof, the correct determination of patent term adjustment at the time of issuance of the patent is **zero (0) days** (85 days of PTO delay, reduced by 107 days of applicant delay).

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in black ink, appearing to read "Nancy Johnson" with a stylized flourish below it.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions